

Catholic University Law Review

Volume 27
Issue 4 Summer 1978

Article 9

1978

INTRODUCTION TO LAW, LEGAL PROCESS AND PROCEDURE: CASES AND MATERIALS. By Cornelius F. Murphy, Jr., St. Paul: West Publishing Co., 1977. Pp. xxviii, 766.

R. H. Clark

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

R. H. Clark, *INTRODUCTION TO LAW, LEGAL PROCESS AND PROCEDURE: CASES AND MATERIALS*. By Cornelius F. Murphy, Jr., St. Paul: West Publishing Co., 1977. Pp. xxviii, 766., 27 Cath. U. L. Rev. 819 (1978). Available at: <https://scholarship.law.edu/lawreview/vol27/iss4/9>

This Book Review is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

BOOK REVIEW

INTRODUCTION TO LAW, LEGAL PROCESS AND
PROCEDURE: CASES AND MATERIALS. By
Cornelius F. Murphy, Jr.,† St. Paul: West
Publishing Co., 1977. Pp. xxviii, 766.

*R.H. Clark**

A perennial, but nonetheless significant debate in legal education concerns the content and structure of the introductory legal methods course. Whether this course is designated as "legal methods," "introduction to legal process," or by any of the similar titles currently embellishing law school catalogs, the course is critically important since it may well shape not only the student's entire perspective on law school and the legal system, but his or her attitudes as a practicing lawyer. This course also provides the student with one of the few opportunities available in the contemporary law school curriculum to develop a broad perspective about the legal process and the values it represents, instead of focusing upon a narrow area of substantive law. Yet the content of such a course has never been established to the satisfaction of either law faculty or students.

This fundamental disagreement over content has manifested itself not only in the large variety of courses found at different law schools, but also in the vast range of texts written to serve as the framework for these courses. Some of these texts focus upon the historical development of legal institutions as the preferred method of preparing the student for legal study;¹ others focus upon the actual structure of courts, how the legal process functions, the role of language and reasoning in legal interpretation, and the tools of legal research.² One interesting treatment studies the legal process by examining a key problem area, freedom of expression, to illustrate the mechanisms of the legal system;³ another is premised upon the assumption that every legal problem has its roots in the "philosophical

† Professor of Law, Duquesne University.

* Trial Attorney, Antitrust Division, Department of Justice, Washington, D.C. The views expressed herein are those of the author and not of the Department of Justice.

1. See, e.g., S. KIMBALL, *HISTORICAL INTRODUCTION TO THE LEGAL SYSTEM* (1966), J. SMITH, *CASES AND MATERIALS ON THE DEVELOPMENT OF LEGAL INSTITUTIONS* (1965).

2. See, e.g., W. FRYER & H. ORENTLICHER, *CASES AND MATERIALS ON LEGAL METHOD AND LEGAL SYSTEM* (1967).

3. See M. FRANKLIN, *THE DYNAMICS OF AMERICAN LAW* (1968).

realm."⁴

Against this richly divergent background, Professor Murphy has developed his own unique text, which concentrates upon concepts of civil procedure as a device both to illustrate law and the legal process, and to suggest some of the normative "ultimate principles of adjudication"⁵ that are critical to understanding this unique social mechanism. Each chapter draws on civil procedure cases to illustrate its general themes. But utilizing civil procedure materials as the subject matter framework for an introductory legal methods casebook presents some serious problems. Murphy has not written this text for a combination introduction to law and a civil procedure course; he fully expects the student will undertake separate civil procedure courses.⁶ Yet even a cursory comparison of the cases in Murphy's volume with those in a leading casebook in civil procedure⁷ indicates a tremendous overlap between the two volumes. Murphy is well aware of this problem, and maintains that such an overlap will encourage law schools to design civil procedure courses which concentrate on the trial process, thereby avoiding duplication and realizing "the pedagogical potentials implicit in the idea of adjudication."⁸ Consequently, a law school considering adoption of the Murphy text should be prepared to carefully coordinate its legal methods and civil procedure courses to minimize unnecessary duplication. A second attendant question is whether or not civil procedure cases, generally considered to be among the most difficult material for students to master, ought to be the law student's first exposure to the complex issues involved in analyzing law and the legal process. Can these cases be mastered and incorporated into a complete theoretical format at the introductory level, given that the purpose of the course is not to teach civil procedure but to provide a fundamental understanding of legal process? There is, of course, no clear answer to this query, but it is a consideration that ought to be addressed before a law professor commits his or her school to the Murphy approach.

Whether or not one completely agrees with Murphy's decision to rely almost exclusively upon civil procedure cases, the author has made extremely skillful and effective use of this material in structuring his casebook. The book is one of the most astutely organized and coherent casebooks now in print. The cases have been carefully selected to illustrate

4. See W. BISHIN & C. STONE, *LAW, LANGUAGE AND ETHICS* (1972).

5. C. MURPHY, JR., *Preface* to *INTRODUCTION TO LAW, LEGAL PROCESS, AND PROCEDURE: CASES AND MATERIALS*, at xx (1977).

6. *Id.* at xix.

7. See e.g., J. COUND, J. FRIEDENTHAL & A. MILLER, *CIVIL PROCEDURE: CASES AND MATERIALS* (2d ed. 1974).

8. C. MURPHY, JR., *supra* note 5, at xix.

each point under discussion with the best decisions published. On a particular topic, such as personal jurisdiction, each case cumulatively adds a bit more perspective and complexity. Having read the entire line of cases, the considerations Murphy wishes to convey are foremost in the student's mind. Unlike far too many casebooks which routinely reprint voluminous concurring and dissenting opinions, Murphy includes separate opinions only when they provide a valuable dialogue between the members of the court, each contributing its own distinctive perspective to the issue under analysis.⁹ The cases are effectively structured so that the student can see how different courts, when confronted with identical questions, may disagree and react to contrasting decisions from other jurisdictions.¹⁰ Murphy does not bury the student in extensive notes, though the questions which are posed in the notes are masterful uses of this device. Rather, he employs another device by setting forth the facts involved in a certain decision and then asking the student to develop a resolution. The note cases selected touch upon a wide variety of substantive areas, some of which, such as torts and contracts, will be explored by the student in other first year courses, while others such as conflicts, patents, and securities regulation will be encountered in the second and third years.

The book is divided into four main chapters covering jurisdiction, development of a cause of action, statutory interpretation, and equity. It is surprising that Murphy begins only two of these chapters with an introductory essay. He has instead chosen to develop much of his textual material in the notes. Since the book is designed for first-year students, however, perhaps a short textual preface to each chapter's cases would be a more appropriate and helpful approach.

Murphy first focuses on the expansion of personal jurisdiction from *Pennoyer v. Neff*¹¹ through *International Shoe Co. v. State of Washington*¹² and the more recent cases which continue to extend its reach such as *McGee v. International Life Ins. Co.*¹³ He also includes the major cases decided in the wake of *Fuentes v. Shevin*¹⁴ pertaining to repossession of personalty without the safeguard of a judicial hearing.¹⁵ This interesting

9. See, e.g., *Walker v. Birmingham*, 388 U.S. 307 (1967), reprinted in C. MURPHY, JR., *supra* note 5, at 654; *Cleveland v. United States*, 329 U.S. 14 (1946), reprinted in C. MURPHY, JR., *supra* note 5, at 372; *Jonnet v. Dollar Sav. Bank*, 530 F.2d 1123 (3d Cir. 1976), reprinted in C. MURPHY, JR., *supra* note 5, at 110.

10. An example of this technique is the section on recovery for consortium. See C. MURPHY, JR., *supra* note 5, at 132-170.

11. 95 U.S. 714 (1877).

12. 326 U.S. 310 (1945).

13. 355 U.S. 220 (1957).

14. 407 U.S. 67 (1972).

15. See *North Georgia Finishing v. Di-Chem Inc.*, 419 U.S. 601 (1975), reprinted in C.

line of cases typifies how civil procedure opinions can be used to illustrate some of the important value questions with which a law student should be familiar. Unfortunately in this chapter, as throughout the book, Murphy devotes scant attention to the normative issues, even though his chapter bibliographies overflow with references to enduring jurisprudential milestones. This lack of sustained treatment for many of the value issues inherent in law as a social mechanism produces a definite deficiency in one area in which Murphy had hoped to stimulate awareness.¹⁶

Causes of action are the focus of the second chapter. The first section focuses upon the claim of injury by presenting an extremely interesting line of cases involving the recognition of consortium. Again, while important normative issues are raised by these cases, particularly the role of equality in law and the use of law to achieve remedial justice, slight attention is devoted to them in the notes. Nonetheless, this is a very strong section of the casebook. The second section, "stability and change," raises the issues of the judiciary versus the legislature as policymaker, *stare decisis*, retroactive application of decisions, and collateral proceedings. The cases selected to illustrate these concepts are again drawn primarily from the consortium area, with secondary reliance (in the area of prospective versus retroactive application of new case law) on United States Supreme Court cases in the field of criminal justice.¹⁷ The concluding section of the chapter covers joinder, collateral estoppel, and *res judicata*. It is in this section of the book that the only secondary source material, an excerpt from a law review article, is found. Murphy would have been better advised to include more non-case materials, not only because new law students should discover as early as possible the tremendous benefits that professional commentary can afford the lawyer, but also to serve as a device to break the monotony of reading nothing but case after case. In any regard, the materials throughout this section are quite effective since they show the new

MURPHY, JR., *supra* note 5, at 99; *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974), *reprinted in* C. MURPHY, JR., *supra* note 5, at 83.

16. C. MURPHY, JR., *supra* note 5, at xviii. The unsatisfied need for law students to be exposed to value questions, such as the role law ought to play in structuring society, its relationship to morality, and the interplay between stability and change, has been recognized in a recent Carnegie Commission study of legal education. See H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* (1972). Jerold S. Auerbach, in his most fascinating volume, attributes at least part of the loss of respect for law and the legal profession to this failure to confront the enduring value questions implicit in law as a social mechanism. See J. AUERBACH, *UNEQUAL JUSTICE*, at 301-306 (1976).

17. *E.g.*, *United States v. United States Coin & Currency*, 401 U.S. 715 (1971) *reprinted in* C. MURPHY, JR., *supra* note 5, at 215; *Mackey v. United States*, 401 U.S. 667 (1971) *reprinted in* C. MURPHY, JR., *supra* note 5, at 223; *Desist v. United States*, 394 U.S. 244 (1969), *reprinted in* C. MURPHY, JR., *supra* note 5, at 210; *Stovall v. Denno*, 388 U.S. 293 (1967), *reprinted in* C. MURPHY, JR., *supra* note 5, at 204.

student both the potential for judicial policymaking and the self-imposed restraints upon such policymaking that the courts themselves have recognized.

The important topic of statutory construction is covered in chapter three. The bulk of this chapter is devoted to examining the actual process of statutory interpretation. A particularly effective insight is afforded by studying how state compensation statutes affected the concept of consortium as it had been fashioned by the courts. Consequently, this new material integrates nicely with that developed in the preceeding chapter, furnishing the student an excellent opportunity to contrast judicial with legislative policymaking on the same issue and to observe how these two policymaking institutions interact. A number of diverse and predominantly federal cases are then presented in a most interesting fashion illustrating such principles of statutory interpretation as strict construction of criminal statutes, repeal by implication, the "plain meaning" school of interpretation, and the rules of strict and liberal construction. Several intriguing opinions, such as the "badge of servitude" holding in *Jones v. Alfred H. Mayer Co.*,¹⁸ examine the use of legislative history as an interpretative aid.¹⁹ The final section of the chapter employs the long arm statutes to demonstrate the role of legislative intent in statutory interpretation. Legislative purpose becomes critical in such cases, since not all states have chosen to extend long arm jurisdiction to the fullest reach permitted by the due process clause of the fourteenth amendment. Statutory construction and the constraints it places on judicial freedom of action is one of the most challenging concepts facing any student of the law, and Murphy's careful selection of materials and organization of competing themes renders this a most interesting and valuable chapter.

The final chapter examines equity. This is the only chapter in which there is an extensive introductory essay by the author, which is most effective. One section examines equity from the perspective of jurisdiction, demonstrating how American courts have circumvented the traditional limitation that equity would act only upon the person and have extended it

18. 392 U.S. 409 (1968), *reprinted in* C. MURPHY, JR., *supra* note 5, at 379. For an effective refutation of the historical evidence cited by the Court in sustaining its decision, see C. FAIRMAN, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: RECONSTRUCTION AND REUNION 1864-1868 PART ONE 1207-60* (1971).

19. One of the most interesting elements of this discussion is found in Mr. Justice Stevens' explanation of why he chose "to follow a line of authority which I firmly believe to have been incorrectly decided." *Runyon v. McCrary*, 427 U.S. 160, 189 (1976) (Stevens, J., concurring) *reprinted in* C. MURPHY, JR., *supra* note 5, at 393. The inclusion of this concurrence once again demonstrates how Murphy's judicious selection of separate opinions can produce a valuable dialogue from which the new law student can particularly benefit.

to land titles in cases such as *Fall v. Eastin*.²⁰ Another investigates the purposes of equity and the circumstances in which injunctions will lie. By including cases dealing with the Pentagon Papers,²¹ sit-ins, and protection of individuals from police invasions of privacy, Murphy again demonstrates that the English limitation upon equity of protecting only property rights has been superseded in the American experience. The next section in the final chapter looks at the "influence of moral principles" to show how equity defeats unconscionable bargains, corrects certain mistakes, and forecloses transferring property to avoid creditors. It also demonstrates the development of equitable estoppel. The chapter's last section concerns equitable relief, principally through a most skillful tracing of the interplay between state and federal courts involving the doctrine of abstention and the Anti-Injunction Act.²² This section also analyzes the right to a jury trial in both criminal contempt, and mixed equity and legal proceedings, including the famous *Beacon Theaters*²³ and *Dairy Queen*²⁴ decisions. A great number of valuable concepts are integrated into this chapter, and, despite its length and division into five separate sections, the masterly organization of fine materials renders the treatment highly successful.

While concern about certain aspects of the casebook has been indicated, most notably the editor's heavy reliance upon civil procedure cases and the absence of non-case materials, this should not be read as an effort to diminish the merit of what Murphy has achieved. In some ways, Murphy's book is a model of how effective casebooks should be designed and structured. That his case materials work so well together, articulating his central themes so smoothly for the reader, only indicates how deficient in conception and execution many casebooks are. The masterful organization of diverse case materials produces a coherent conceptual framework within which the first-year student can explore some of the central themes of law and the legal process. Although it is regrettable that Murphy has not chosen to devote more sustained attention to some of the critical jurisprudential questions suggested by his carefully selected materials, this failing is not fatal to the success of the casebook. In the hands of the proper professor, Murphy's significant introductory casebook can contribute ma-

20. 215 U.S. 1 (1909), *reprinted in* C. MURPHY, JR., *supra* note 5, at 509.

21. *New York Times Co. v. United States*, 403 U.S. 713 (1971), *reprinted in* C. MURPHY, JR., *supra* note 5, at 554.

22. 28 U.S.C. § 2283 (1970). *See generally* Field, *Abstention in Constitutional Cases: The Scope of the Pullman Abstention Doctrine*, 122 U. PA. L. REV. 1071 (1974).

23. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1958), *reprinted in* C. MURPHY, JR., *supra* note 5, at 744.

24. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1961), *reprinted in* C. MURPHY, JR., *supra* note 5, at 751.

terially to making the first semester of law school a period of vital stimulation and growth for the new law student.

